

Before the
Federal Communications Commission
Washington, D C 20554

RECEIVED

SEP 25 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Deployment of Wireline Services Offerings)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Bell Atlantic Corporation)	
for Relief from Barriers to Deployment of)	CC Docket No. 98-11
Advanced Telecommunications Services)	
)	
Petition of U S WEST for Relief from)	
Barriers to Deployment of Advanced)	CC Docket No. 98-26
Telecommunications Services)	
)	
Petition of Ameritech for Relief from)	
Barriers to Deployment of Advanced)	CC Docket No. 98-32
Telecommunications Services)	
)	
Petition of Alliance for Public)	
Technology Requesting Issuance of Notice)	CCB/CPD No. 98-15
of Inquiry and Notice of Proposed)	RM 9244
Rulemaking to Implement Section 706 of)	
the 1996 Telecommunications Act)	
)	
Petition of Association for Local)	
Telecommunications Services (ALTS) for a)	CC Docket No. 98-78
Declaratory Ruling Establishing Conditions)	
Necessary to Promote Deployment of)	
Advanced Telecommunications Capability)	
Under Section 706 of the)	
Telecommunications Act of 1996)	
)	
Southwestern Bell Telephone Company,)	
Pacific Bell, and Nevada Bell Petition for)	CC Docket No. 98-91
Relief from Regulation Pursuant to Section)	
706 of the Telecommunications Act of 1996)	
and 47 U.S.C. § 160 for ADSL Infrastructure)	
and Service)	

COMMENTS OF
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION

The Computer & Communications Industry Association ("CCIA") submits comments in this proceeding.

CCIA is an international association of computer and communications companies, as represented by their most senior executives. Member companies represent a broad cross-section of the industry, including computer hardware manufacturers, software providers, communications and networking equipment manufacturers, telecommunications service providers (interexchange and local exchange carriers), online service providers, systems integrators, and resellers. CCIA and its members have a direct, substantial interest in the rapid and efficient deployment of advanced broadband services, the subject of the petitions in this proceeding.

CCIA, with its broad membership base, appreciates the diversity of opinion regarding how best to encourage, develop and deploy innovative broadband services and high-bandwidth networks. CCIA's members strongly believe that any impediments — regulatory or otherwise — to the rapid development of broadband services and networks should be examined closely by the Commission so that appropriate measures may be taken.

CCIA does not intend by these comments to align itself with any segment of the industry in advocating a particular solution. Rather, CCIA urges the Commission to proceed cautiously toward the removal of existing regulatory barriers to the introduction of new broadband services. CCIA believes that this proceeding offers a unique opportunity for the Commission to establish policies that allow it to fulfill its role to "ensure that the marketplace is conducive to investment, innovation,

and meeting the needs of consumers"¹ regarding broadband development. CCIA stands ready to assist the Commission to further the pro-competitive goals of the Telecommunications Act of 1996² and to facilitate the deployment of broadband services.

CCIA does not suggest which regulatory model the Commission should follow. The regulatory environment has changed considerably in recent years. Technologies are converging and companies are developing innovative products and expanding into new service areas. These changes are causing the old regulatory definitions, distinctions, and models to break down.³ The Commission must proceed with caution. The market for broadband is still developing and companies are formulating new competitive strategies. Experimentation and innovation must not be stifled by the imposition of premature and unnecessary mandates.

Whatever rules, if any, the Commission adopts, CCIA urges the Commission to use this proceeding as a departure point for a new direction in the interpretation and implementation of the Act. CCIA's members are prepared to offer new high-bandwidth facilities and innovative broadband services once regulatory policies make it possible for them to do so. However, they feel that the Commission's administration of the Act to date has not opened the regulatory structure to the enormous potential that these broadband developments could yield. The Commission's insight and recommendations are appropriate steps in the right direction at this time.

¹ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-188, ¶ 2 (1998).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 150 *et seq.* (the "Act").

³ See Barbara Esbin, *Internet Over Cable: Defining the Future in Terms of the Past*, Federal Communications Commission, OPP Working Paper No. 30, August 1998.

Regardless of the rules adopted, CCIA feels that the Commission should strive to adopt rules that promote stability. Interested parties must be able reasonably to foresee the likely results of compliance so that they can keep pace with technological innovation. Additionally, the rules adopted should be flexible. Interested parties must be able to adapt their products and services to accommodate rapid changes in technology and the market.

CCIA also believes that, whatever rules the Commission adopts, they should be structured in a manner that does not discourage the use of strong encryption. Individuals, private companies, and public entities must be free to pick and choose among the variety of encryption techniques available today and in the near future. The worldwide marketplace for encryption is growing, and with it, the opportunities and choices available to Americans are expanding. The Commission must not impede this growth or impair the public's ability to use strong encryption to protect privacy and proprietary interests on all levels. This country's leadership in protecting personal privacy, and in promoting economic growth and technological leadership depends on it. Conversely, any policy that further delays the ability of U.S. industry to deploy and distribute strong encryption technology will further erode the U.S. competitive posture to no ultimate purpose.

In addition, CCIA urges the Commission to refrain from regulating content on the Internet. The success and popularity of the Internet stems directly from its lack of regulation. A wealth of information is disseminated and opportunities flourish in this environment. CCIA feels strongly that the Internet's growth will be impeded if the Commission begins to regulate its content. Slowing down, or stopping, the expansion of the Internet will injure all sectors of American society. It will harm low-income, rural and urban citizens who benefit from the Internet's opportunities, students who learn from the Internet's information, and companies that profit from the Internet's potential.

CCIA also notes that the traditional narrow rationale for content regulation in certain electronic media does not exist in the current broadband environment. The usual justification, *i.e.*, spectrum scarcity, is absent from the vast array of broadband media. Moreover, there has been a strong judicial bar against regulating speech on the Internet.⁴ Further, there is no unequivocal Congressional directive. In sum, the Commission lacks the authority to regulate Internet content. Indeed, even if the Commission were to attempt to regulate Internet content, its assertion of authority would be subject to successful constitutional challenge under *Reno v. ACLU*.⁵

Broadband services, networks, and products promise to deliver fantastic new benefits to society. U.S. entrepreneurs will benefit when higher bandwidth leads to increased sales of manufacturers' products; adds value, revenue, and margin to the businesses of Internet access and online service providers; and ushers in ever greater use of telecommunications companies' networks. The American public benefits when consumers have a wide choice of multimedia entertainment choices and educational offerings; and when students worldwide have ready access to information wherever it is housed.

These opportunities should not be lost and this demand should be encouraged through the offer of diverse services provided by multiple providers. CCIA's members will offer a balancing element to the debate. They have a wealth of experience and resources, and, in their diversity of opinion, are committed to developing progressive and thoughtful outcomes.

⁴ *Reno v. ACLU*, 117 S.Ct. 2329 (1997).

⁵ *Id.*

CCIA emphasizes the Commission's duty to the citizens of the 21st century. The Commission must refrain from erecting any regulatory barriers that would delay deployment of broadband services. CCIA urges the Commission to search for innovative policies that strongly encourage the rapid introduction of new broadband technologies.

Respectfully submitted,

Richard D. Marks

Richard D. Marks/RS

Megan H. Troy

Vinson & Elkins, L.L.P.

1455 Pennsylvania Ave., N.W.

Washington, D.C. 20004

Counsel for Computer & Communications

Industry Association

Stephen I. Jacobs
Vice President, Industry Relations
CCIA
666 Eleventh Street, N.W., Suite 600
Washington, D.C. 20001

Dated: September 25, 1998